

## Nuclear Regulatory Commission

## § 4.125

(b) Reasonable accommodation may include: (1) Making facilities used by employees readily accessible to and usable by disabled persons, and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions. This list is neither all-inclusive nor meant to suggest that an employer must follow all the actions listed.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program or activity, factors to be considered include:

(1) The overall size of the recipient's program or activity with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operations, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified disabled employee or applicant if the basis for denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

[45 FR 14535, Mar. 6, 1980, as amended at 68 FR 51345, Aug. 26, 2003]

### § 4.124 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out disabled persons or any class of disabled persons unless:

(1) The test score or other selection criterion as used by the recipient is shown to be job-related for the position in question; and

(2) Alternative job-related tests or criteria that do not screen out or tend to screen out as many disabled persons are not available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the ap-

plicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

### § 4.125 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a disabled person or as to the nature or severity of a disability. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination, or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity, or when a recipient is taking affirmative action pursuant to section 503 of the Rehabilitation Act of 1973, the recipient may invite applicants for employment to indicate whether and to what extent they are disabled: *Provided, That:*

(1) The recipient makes clear to the applicant that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient makes clear to the applicant that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this subpart.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty: *Provided, That:*

(1) All entering employees are subjected to such an examination regardless of disability; and

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(2) The results of such an examination are used only in accordance with the requirements of this subpart.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant must be collected on separate forms. The recipient shall retain each form as a record for three years from the date the applicant's employment ends, or, if not hired, from the date of application. Each form must be accorded confidentiality as a medical record, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties that may be assigned to disabled persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition associated with the disability might require emergency treatment; and

(3) Government officials investigating compliance with the Rehabilitation Act of 1973 shall be provided relevant information upon request.

[45 FR 14535, Mar. 6, 1980, as amended at 53 FR 19244, May 27, 1988]

#### § 4.126 General requirement concerning accessibility.

No qualified disabled person shall, because a recipient's facilities are inaccessible to or unusable by disabled persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance.

[45 FR 14535, Mar. 6, 1980, as amended at 68 FR 51345, Aug. 26, 2003]

#### § 4.127 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity so that when each part is viewed in its entirety it is readily accessible to and usable by disabled persons. This paragraph does not necessarily require a recipient to make each of its existing facilities or every part of an existing facility accessible to and usable by disabled persons.

(b) *Methods.* A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of

classes or other services to accessible buildings, assignment of aids to beneficiaries, home visits, delivery of health, welfare or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of § 4.128 or any other methods that result in making its program or activity accessible to and usable by disabled persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that serve disabled persons in the most integrated setting appropriate.

(c) *Time period.* A recipient shall comply with the requirement of paragraph (a) of this section within 60 days of the effective date of this subpart except that where structural changes in facilities are necessary, the changes are to be made within three years of the effective date of this subpart, but in any event, as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop a transition plan setting forth the steps necessary to complete the changes. The plan is to be developed with the assistance of interested persons, including disabled persons, or organizations representing disabled persons, and the plan is to meet with the approval of the NRC. The recipient shall retain a copy of the transition plan as a record until any structural change to a facility is complete. A copy of the transition plan is to be made available for public inspection. At a minimum, the plan is to:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility and usability of its program or activity to disabled persons;

(2) Describe in detail the methods that will be used to make the facilities accessible to and usable by disabled persons;